INTERVIEWING THE EXPERT WITNESS

19th Judicial Circuit
Child Representative/Guardian Ad Litem Training
College of Lake County – September 11-12, 2012

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I. Differing Roles in Interview Process for Attorneys/Guardian Ad Litem/Child Representative

A. Right to Communicate with 604(b) and/or 604.5 Experts

B. Manner of Communication

C. Discoverable Information

**750 ILCS 5/506*
**In Re Marriage of Bates*, 212 Ill. 2d 489, 289 Ill.Dec. 218, 819 N.E. 2d 714 (2004)
**In Re Marriage of Kostusik*, 361 Ill.App.3d 103, 296 Ill.Dec. 732, 836 N.E. 2d 147 (1st Dist., 2005)

II. Who is Interviewing Who

A. Preparation before Interview

1. Do the Interview yourself
2. List of questions ahead of time
3. Questions on behalf of children
4. Questions on behalf of attorney
5. Research about evaluator background
6. Type of Expert Needed

B. Costs

1. Retainer Payments – Confirmed
2. Costs and Billing Practices
3. Timing of Payments
4. Itemized Billing Statements

C. Points of Interest

1. Question Role/Parameters of Evaluators
2. Type of Evaluation to be Performed
3. Timeline for Completion of Evaluation
4. Questionnaire and Approach to Interviews
5. Needs for Psychological Testing – Outside Expert
6. Types of Psychological Testing to be Initiated
7. Maintain Notes of Interviews and Investigations
8. Discuss Role of Attorney/GAL/Child Rep. in Process
9. Any Particular Bias/Prejudice that would impact Case
10. Who is going to do the work

III. Deposing Child Custody Expert Significantly Different than Interview

A. Discovery is Key – Use Your Own Subpoena and Rider

1. **GET ENTIRE FILE AHEAD OF TIME AND READ IT**

B. Background

1. Examination of Curriculum Vitae
2. Examine Training Background and Areas of Specialty (Who trained under)
3. Experience as Testifying Experts
4. Affiliations and Organizations
5. Board Certified – "What does that mean"
6. Potential Bias or Prejudice with Litigants, Lawyers, Courts, Issues, Etc.
7. Any times criticized or reprimanded, etc.

C. Process of Evaluation - Industry Standards

*Child Custody Evaluation Standards of American Academy of Matrimonial Lawyers (2010 Edition)

**American Psychological Association Guidelines for Child Custody Evaluations

***Association of Family and Conciliation Courts Model Standards of Professional Practice for Child Custody Evaluations

1. Interviews

    a. Timing and Length of Interviews (Reasons Why)
    b. # of Interviews with Each Party/Child (Alone/Together)
    c. Method of Note-taking (handwritten and typed)
    d. Previous Questionnaires and/or Live Interviews
    e. Who present during Interviews and Where Interviewed
    f. Third Party Contacts (Phone/Person/Writing)
    g. Home Visits vs. Office Visits (Differences/Why)

2. Information Gathering

    a. Collateral Contacts – Solicited or Requested
    b. Attorney or Legal Contacts – Written or Oral
    c. Actively Seeking Information or Accepting Only what is presented
    d. Records from Other Therapists or Counselors (Releases)
    e. Records from Schools
    f. Watch for Vague Summaries of Sources of Information
    g. Information gathered but not included in Report (why not)
    h. Conflicting Information (how decide what is more important)
    i. Time period when information gathered/reviewed
    j. Questions for Parties about information or just accepted/discarded

3. Psychological Testing

    a. New Expert or Same Expert
    b. Types of Tests to be Performed
    c. Requested by Litigant or Expert
    d. Who Grades Tests (credentials of that person)
    e. Reliability of Testing Data
    f. Preservation of Data
    g. Objective vs. Subjective Scoring and Conclusions
    h. Other Interpretations Possible

4. Writing of Report

    a. Prior Drafts
    b. Who drafted Report
    c. Time to prepare Report
    d. What Considered/What Discarded (Why)
    e. Follow-up after data gathered and interviews completed
    f. Time Report Submitted vs. Current Events
    g. Update necessary for any reason

Author's Notes

(1) **Uniform Order for Support.** *A completed Uniform Order for Support includes all information required under § 505.3. The form is found at 13 Ill.Prac., Fam.L. 750 ILCS 28/999(1.1).*

750 ILCS 5/506

§ 506. Representation of child

(a) Duties. In any proceedings involving the support, custody, visitation, education, parentage, property interest, or general welfare of a minor or dependent child, the court may, on its own motion or that of any party, appoint an attorney to serve in one of the following capacities to address the issues the court delineates:

(1) Attorney. The attorney shall provide independent legal counsel for the child and shall owe the same duties of undivided loyalty, confidentiality, and competent representation as are due an adult client.

(2) Guardian ad litem. The guardian ad litem shall testify or submit a written report to the court regarding his or her recommendations in accordance with the best interest of the child. The report shall be made available to all parties. The guardian ad litem may be called as a witness for purposes of cross-examination regarding the guardian ad litem's report or recommendations. The guardian ad litem shall investigate the facts of the case and interview the child and the parties.

(3) Child representative. The child representative shall advocate what the child representative finds to be in the best interests of the child after reviewing the facts and circumstances of the case. The child representative shall meet with the child and the parties, investigate the facts of the case, and encourage settlement and the use of alternative forms of dispute resolution. The child representative shall have the same authority and obligation to participate in the litigation as does an attorney for a party and shall possess all the powers of investigation as does a guardian ad litem. The child representative shall consider, but not be bound by, the expressed wishes of the child. A child representative shall have received training in child advocacy or shall possess such experience as determined to be equivalent to such training by the chief judge of the circuit where the child representative has been appointed. The child representative shall not disclose confidential communications made by the child, except as required by law or by the Rules of Professional Conduct. The child representative shall not render an opinion, recommendation, or report to the court and shall not be called as a witness, but shall offer evidence-based legal arguments. The child representative shall

disclose the position as to what the child representative intends to advocate in a pre-trial memorandum that shall be served upon all counsel of record prior to the trial. The position disclosed in the pre-trial memorandum shall not be considered evidence. The court and the parties may consider the position of the child representative for purposes of a settlement conference.

(a–3) Additional appointments. During the proceedings the court may appoint an additional attorney to serve in the capacity described in subdivision (a)(1) or an additional attorney to serve in another of the capacities described in subdivisions (a)(2) or (a)(3) on the court's own motion or that of a party only for good cause shown and when the reasons for the additional appointment are set forth in specific findings.

(a–5) Appointment considerations. In deciding whether to make an appointment of an attorney for the minor child, a guardian ad litem, or a child representative, the court shall consider the nature and adequacy of the evidence to be presented by the parties and the availability of other methods of obtaining information, including social service organizations and evaluations by mental health professions, as well as resources for payment.

In no event is this Section intended to or designed to abrogate the decision making power of the trier of fact. Any appointment made under this Section is not intended to nor should it serve to place any appointed individual in the role of a surrogate judge.

(b) Fees and costs. The court shall enter an order as appropriate for costs, fees, and disbursements, including a retainer, when the attorney, guardian ad litem, or child's representative is appointed. Any person appointed under this Section shall file with the court within 90 days of his or her appointment, and every subsequent 90–day period thereafter during the course of his or her representation, a detailed invoice for services rendered with a copy being sent to each party. The court shall review the invoice submitted and approve the fees, if they are reasonable and necessary. Any order approving the fees shall require payment by either or both parents, by any other party or source, or from the marital estate or the child's separate estate. The court may not order payment by the Department of Healthcare and Family Services in cases in which the Department is providing child support enforcement services under Article X of the Illinois Public Aid Code. Unless otherwise ordered by the court at the time fees and costs are approved, all fees and costs payable to an attorney, guardian ad litem, or child representative under this Section are by implication deemed to be in the nature of support of the child and are within the exceptions to discharge in bankruptcy under 11 U.S.C.A. 523. The provisions of Sections 501 and

In re MARRIAGE OF NORMA PEREZ DE BATES, Appellant, and R. EDWARD BATES, Appellee.

Docket No. 97059

SUPREME COURT OF ILLINOIS

212 Ill. 2d 489*; *819 N.E.2d 714*; *2004 Ill. LEXIS 1619*; *289 Ill. Dec. 218

October 28, 2004, Opinion Filed

SUBSEQUENT HISTORY: Counsel Amended January 6, 2005.

PRIOR HISTORY: [***1]
De Bates v. Bates, 342 Ill. App. 3d 207, 794 N.E.2d 868, 2003 Ill. App. LEXIS 879, 276 Ill. Dec. 618 (Ill. App. Ct., 2003)

DISPOSITION: Judgment of the appellate court affirmed.

COUNSEL: For Norma Perez De Bates, APPELLANT: Mr. Paul L. Feinstein, Paul L. Feinstein, Ltd., Chicago, IL.

For R. Edward Bates, APPELLEE: Mr. Robert G. Black, Law Offices of Robert G. Black, Naperville, IL. Mr. Joel D. Arnold, Fortunato, Farrell, Davenport & Arnold, Westmont, IL.

For Justice for Children, AMICUS CURIAE: Alene Ross Levy, Haynes & Boone, L.L.P., Houston, TX. Pamela Harris, O'Melveny & Myers, L.L.P., Washington, D.C.

For Richard L. Ducote, AMICUS CURIAE, Pro Se: Mr. Richard L. Ducote, Richard Ducote & Associates, PLC, New Orleans, LA.

JUDGES: JUSTICE KILBRIDE delivered the opinion of the court.

OPINION BY: KILBRIDE

OPINION

[*494] [**716] JUSTICE KILBRIDE delivered the opinion of the court:

Following a lengthy hearing on the petition of Edward Bates to modify custody, the trial court terminated Norma Bates' custody of the minor child, awarded custody [**717] to Edward, and restricted Norma's visitation rights pending a professional evaluation. The court also denied Edward's petition to terminate unallocated maintenance and support based on an alleged continuing conjugal relationship between Norma and another man. Prior to the hearing, the court denied Norma's constitutional challenge to section 506(a)(3) of the Illinois Marriage and Dissolution of Marriage Act (Act) (*750 ILCS 5/506(a)(3)* (West 2002)) and, at trial, read and relied on the written report of the child's representative appointed pursuant to that statute. Norma appealed, Edward cross-appealed, and the appellate court affirmed. *342 Ill. App. 3d 207, 794 N.E.2d 868, 276 Ill. Dec. 618.* We granted Norma leave to appeal. 177 Ill. 2d *R. 315.* Edward seeks cross-relief. 155 Ill. 2d *R. 318.* [***2] We now affirm.

BACKGROUND

The parties were granted a judgment of dissolution, incorporating a joint parenting agreement, on July 14, 2000. The agreement provided that the minor child, S.B., would reside primarily with Norma, subject to Edward's defined rights of visitation. The agreement mandated the "involvement and cooperation of both parents" in S.B.'s best interests, and both parents were ordered to use their "best efforts to foster the respect, love and affection of S.B. toward each parent" and to "cooperate fully in implementing a relationship with S.B. that would give her the maximum feeling of security that may be possible." The judgment further provided that Edward [*495]

would pay unallocated family support to Norma until one of several described events, including the death of either party, the remarriage of Norma, or the cohabitation of Norma on a resident, continuing, conjugal basis as determined by a court after notice and a hearing.

On March 9, 2001, Norma filed a petition for modification of visitation and other relief, alleging that Edward had breached the joint parenting agreement and that S.B. was experiencing extreme anxiety and distress following contact with her [***3] father. She also requested appointment of a guardian *ad litem* pursuant to section 506(a) of the Act (*750 ILCS 5/506(a)* (West 2000)). In an agreed order, attorney John Bush was appointed as the child's representative. The record is silent as to why a child representative was appointed, rather than a guardian *ad litem* as requested by Norma.

On March 19, 2001, Edward petitioned the court for a rule to show cause why Norma should not be held in contempt for denying him all contact with S.B., including by telephone, beginning around January 1, 2001. Edward's petition claimed that Norma failed to discuss decisions regarding S.B.'s activities with him; that she unilaterally transferred S.B. to a different school without prior notice to or discussion with Edward; and that she repeatedly denigrated Edward in the presence of S.B. On May 15, 2001, Edward petitioned to modify the judgment for dissolution, including custody, asserting the same grounds as a willful violation of the judgment of dissolution and the joint parenting agreement. Edward also sought termination of the unallocated family support, alleging that Norma had cohabited on a resident, continuing, [***4] conjugal basis with another man. The matter was set for trial on all issues on December 19, 2001.

Pursuant to section 604(b) of the Act (*750 ILCS 5/604(b)* (West 2000)), the court appointed Dr. Gerald Blechman to evaluate the postjudgment visitation dispute [*496] and to make a recommendation for its resolution. After interviewing S.B., Dr. Blechman became concerned about her [**718] emotional stability and suggested to the court that she be referred to Dr. Roger Thatcher for therapy. Dr. Thatcher began his involvement as a therapist in September 2001.

On October 1, 2001, Dr. Blechman sent his evaluation to the court and to all attorneys, including the child's representative. The report recounted diagnostic interviews with S.B. and her parents, a collateral interview with Kristin La Scala (a daughter of Edward), and psychological testing administered to Norma and Edward. Dr. Blechman concluded that Norma had induced alienation of S.B. from her father and that this had taken a significant toll on S.B.'s mental health. He recommended immediate intervention to restore the father-daughter relationship. He suggested family therapy two or three times a week with Edward and [***5] S.B., and a strong admonishment to Norma to cooperate with the program, including ceasing any form of abuse allegations against Edward.

At the request of Edward, the court, pursuant to *Supreme Court Rule 215* (166 Ill. 2d R. 215), required Norma to submit to a psychological examination by Dr. Robert Shapiro. After conducting three clinical interviews and psychological testing on Norma in October and November 2001, Dr. Shapiro submitted his written report, admitted in evidence at trial. He concluded that most of the psychological testing was invalid because Norma's answers produced results indicative of an individual who is purposely trying to deceive and present herself as virtuous. He recounted that Norma reported she was afraid of Edward caring for S.B. because he was an alcoholic who was "always drunk."

Norma also reported that S.B. did not enjoy her visitations with Edward. At the time of his evaluation of [*497] Norma, S.B. had not visited her father since January 2001. Norma acknowledged that she called police in Florida on three occasions while S.B. was visiting Edward there during the Christmas holiday in 2000 because she could not reach S.B. and was worried about her safety. Dr. [***6] Shapiro concluded that the presence of police during this vacation disrupted the quality of the vacation and served to remind S.B. of her mother's omnipotence. He could not confirm the existence of parent alienation because he had not evaluated the child, the child-father relationship, and the child-mother relationship.

At the request of Norma, the court appointed Dr. Patrick J. Kennelly, a licensed clinical psychologist with a practice in the treatment of alcoholism, to conduct an examination of Edward pursuant to *Supreme Court Rule 215* (166 Ill. 2d R. 215). He conducted three interviews with Edward in October 2001 and administered psychological testing and alcoholism screening tests. He furnished a written report, concluding that Edward had no evidence of psychological disorders and that the testing showed no indication of alcoholism.

The child's representative proceeded with an investigation and filed a written report with the court on November 19, 2001. The parties also conducted extensive discovery.

On January 11, 2002, the court ordered Dr. Blechman to conduct a reevaluation concerning whether the recommended steps were successful in improving S.B.'s relationship with her [***7] father. He filed an updated evaluation on January 24, 2002, concluding that Norma was still manipulating S.B. and recommending that sole custody of S.B. be given to Edward, with su-

pervision of Norma's visitation by a professional familiar with parental alienation syndrome. He also recommended continued psychotherapy for S.B. and her father for the foreseeable future and strongly [**719] recommended that Norma seek psychotherapy.

[*498] Pretrial Motions

On December 14, 2001, Norma filed a number of motions. She moved to dismiss Edward's petition to modify custody pursuant to section 2-615 of the Code of Civil Procedure (Code) (*735 ILCS 5/2-615* (West 2000)), alleging the failure of Edward to present affidavits establishing a reason to believe S.B.'s physical, mental, moral or emotional health was seriously endangered by the present environment, as required by section 610 of the Act (*750 ILCS 5/610* (West 2000)).

Norma next filed a motion to bar the testimony of Dr. Richard Gardner, Edward's disclosed expert witness, on the ground that the subject matter of his testimony, parental alienation syndrome (PAS), did not meet the reliability [***8] requirements set out in *Frye v. United States, 54 App. D.C. 46, 293 F. 1013 (D.C. Cir. 1923).*

Norma then filed a "motion to order child representative to testify or in the alternative to strike his recommendations and for declaratory judgment regarding the constitutionality of *750 ILCS 5/506*." The motion claimed that Norma's right to due process of law would be denied if the child's representative were allowed to present his report with no attendant right to cross-examine him. The motion asked the court either to strike and disregard the recommendations of Mr. Bush, or to order him to submit to deposition and to testify in the case, or to declare the statute unconstitutional "on its face and/or as applied to Norma Perez."

Finally, Norma filed a motion pursuant to section 2-619(a)(9) of the Code (*735 ILCS 5/2-619(a)(9)* (West 2000)) to dismiss Edward's petition to modify custody on the ground that Edward had improperly asserted the physician-patient privilege when his physical and mental health were at issue.

Edward filed written responses to those motions, asserting, *inter alia*, that Norma had filed dispositive [***9] motions less than 63 days before trial, in violation of a local [*499] rule. The motions were called for hearing on the first day of trial and decided the following day.

On December 20, 2001, the court denied Norma's *section 2-615* motion, finding that Edward's verification of the pleading was sufficient and noting that Norma had participated in extensive discovery without objection. On January 15, 2002, the court allowed Edward to file an affidavit in support of his petition to modify custody, noting that it asserted no changes in the facts alleged in the petition. Norma's *section 2-619(a)(9)* motion was stricken because of its late filing, without prejudice to her right to raise the assertion of privilege issue at trial.

The court struck Norma's motion to bar the testimony of Dr. Gardner as untimely. However, the court treated it as a motion *in limine* and also ordered a *Frye* hearing, to commence on January 15, 2002.

The court found that the child representative's report was "in the nature of a prejudgment or a pretrial pleading" and "not evidence," but the court sealed the report. The court reasoned that the pretrial submission of the report did not implicate the challenged provisions [***10] of *section 506 of the Act*, and the court accordingly denied Norma's request to declare the statute unconstitutional.

On December 18, 2001, Edward filed an amended motion to bar witnesses, including Dr. Jeffrey Johnson, a physician designated as an expert by Norma, because of late disclosure and failure to comply with the requirements of *Supreme Court Rules 213(f)* and *(g)* (177 Ill. 2d Rs. 213(f), (g)). [**720] The court entered an order barring Dr. Johnson from testifying because his report had not been identified and filed in a timely fashion. The court also denied Norma's motion *in limine* to bar Edward from testifying at trial because of his assertion of physician- patient privilege, observing that she failed to file a motion to compel answers to the deposition questions.

[*500] The *Frye* Hearing

Edward, as proponent of the PAS testimony, proffered three expert witnesses and 136 articles from peer-reviewed publications as exhibits. Norma proffered no witnesses and no exhibits.

Dr. R. Christopher Barden, an attorney and a psychologist licensed in Minnesota and Texas, testified that he is familiar with PAS and that he believed everyone in the social sciences field is familiar with [***11] the term. He characterized PAS as a useful and clear description of a set of symptoms or clusters, commonly seen in child custody proceedings, when one parent is actively involved in turning a child against the other parent.

Dr. Barden testified that PAS is generally accepted in the relevant scientific community. He based his opinion on his clinical experience and on his extensive perusal of peer-review publications referencing the syndrome. Peer-review publications are journals and other compendiums where research articles are reviewed for accuracy and methodology by a panel of experts in the relevant field. Dr. Barden identified several peer-reviewed articles submitted by Dr. Richard Gardner and other authors describing and authenticating PAS. Copies of these arti-

cles were admitted in evidence. In Dr. Barden's opinion, the concept of PAS is not novel, having been first referenced in 1994 by the American Psychological Association. Although PAS is not described in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV), published by the American Psychiatric Association in 1994, Dr. Barden did not believe that fact indicated rejection of the syndrome, noting [***12] that another revision of the DSM is expected by 2010.

Dr. Richard Gardner, a board-certified psychiatrist and a clinical professor of child psychiatry, also testified. He referenced several books on PAS and an index of 59 articles on PAS written by his peers. He has written 13 published articles on PAS. He described PAS as a disorder [*501] arising primarily, if not exclusively, in the context of child custody disputes. It results from the combination of one parent's programming or brainwashing a child into a campaign of denigration against the other parent, and the undue indoctrination of the child by the programing parent with his or her own inflated "contributions." This combination, in his opinion, results in PAS. Dr. Gardner testified that PAS is generally accepted in the relevant psychiatric and psychological communities.

Dr. Robert B. Shapiro, a clinical psychologist licensed in Illinois and a member of the Board of Evaluators, used by the Du Page County circuit court to evaluate families in custody disputes, also testified that PAS was generally accepted by the relevant psychological community, observing that "I don't know anybody who doesn't accept it." Dr. Shapiro himself has [***13] diagnosed PAS many times and has testified often in court on the subject.

At the conclusion of the hearing, the court found "that the principle of Parental Alienation Syndrome is sufficiently established to have gained general acceptance in the particular field."

The Trial

Numerous witnesses testified, either in person or by evidence deposition, at the trial beginning on February 26, 2002, and [**721] continuing intermittently until its conclusion on April 17, 2002. Among the witnesses were court-appointed evaluators, retained experts, treating practitioners, as well as the parties, family members, police officers, and private investigators.

Dr. Roger Hatcher, S. B.'s court-appointed therapist, was called as a witness by Edward. He is a licensed psychologist and is the practice director at PsychCare Associates in Aurora. He found S.B.'s mental health to be severely compromised. She was acutely and severely distressed with major symptoms of anxiety and panic relating to Edward caused by Norma's influencing the [*502] child against her father. He found no evidence that any of her distress was caused by Edward. If not for therapeutic intervention, she was headed for an increasingly severe [***14] psychiatric crisis. After a series of sessions with S.B. and interviews with both parents, Dr. Hatcher set up a visitation schedule. After the visits, S.B.'s condition improved and her relationship with Edward was better.

Dr. Shapiro, who conducted the *Rule 215* evaluation of Norma, identified three occurrences consistent with alienation: (1) Norma's series of phone calls to Florida during S.B.'s visitation with Edward; (2) Norma's registering S.B. in school under the surname "Perez," and (3) Norma's failure to maintain S.B.'s scheduled visitation with her father.

Dr. Kennelly, who conducted the *Rule 215* examination of Edward, concluded that Edward showed no evidence of major psychological disorders. He testified that Edward's test results for alcoholism were insignificant.

Dr. Blechman, the court's *section 604(b)* evaluator, testified that S.B. fit the typical criteria for PAS. Her complaints about her father did not appear to be valid. Although she would obsessively repeat the same accusations against her father, she could provide no explanation when pressed for particulars. In Dr. Blechman's opinion, S.B. had false memories suggested or created by Norma. Although S.B. told him [***15] that her father struck her during the Florida vacation, he chose not to believe her. Based on his interviews with the parties, his observations, and his conversations with Dr. Hatcher, he opined that residential custody of S.B. should be awarded to Edward, subject to supervised visitation by Norma with a professional present.

Dr. Richard Gardner testified regarding PAS and the alleged alcoholism of Edward. He did not conduct clinical interviews with S.B. or Norma, but rendered hypothetical [*503] opinions based on his review of documents, reports, depositions and information conveyed to him by Edward. Among the materials reviewed were Dr. Blechman's reports and notes, letters from Dr. Hatcher, police reports from Florida, and the report of child representative John Bush.

Dr. Gardner defined PAS as a psychiatric disorder arising in the context of a child custody dispute. In this disorder, one parent "programs" or "brainwashes" a child into a campaign of denigration against the other parent, even though that other parent is generally good and loving. The denigrating custodial parent inflates his or her own contributions, and PAS arises as a result of a combination of both the undue denigration [***16] and the inflated heightening of the custodial parent's contributions. In Dr. Gardner's opinion, S.B. exhibited classic signs and symptoms of PAS in the moderate category.

He concluded that therapy for the child would be useless as long as she lived with her mother. Dr. Gardner also concluded that Edward is not an alcoholic and that his possible [**722] consumption of some alcohol did not interfere with his parenting.

Edward testified that S.B. had been taken out of her previous school without his knowledge, and he was required to go to court in September 2000 to learn her new school, home address, and phone number. Edward also testified concerning the Florida visitation incident. He described the trip he took with S.B. to Florida in December of 2000 as apparently a happy and good one for her. He observed that on December 29, while S.B. was speaking with her mother on the telephone, she appeared to become agitated. A sheriff's deputy soon arrived, spoke with S.B., and also spoke with Norma on the telephone. No official action was taken. At approximately 1 a.m. the following morning, the same deputy arrived and said he had been called by Norma. He conferred with [*504] Edward, who showed him to S. [***17] B.'s room, where she was sleeping. The deputy again left, without taking any action. At 12:15 p.m. another deputy arrived, spoke with Edward and S.B., and left without taking any action.

Edward's account of these events was essentially corroborated by Richard Young, the deputy who first arrived. His testimony was in the form of an evidence deposition taken telephonically at the instance of Mr. Bush, the child representative. The deposition was taken during trial, with leave of court, and over Norma's objection. Counsel for all parties participated in the deposition. Norma objected to the testimony because Deputy Young was not disclosed as a witness as required by the court's pretrial order. The objection was overruled, and Deputy Young's deposition was read into evidence. He testified that he was dispatched as a result of a Teletype message from Illinois, requesting a check on the child's welfare. He could discern no physical injury or abuse to S.B., and she made no claim that Edward had harmed her, although she seemed upset when he arrived. He returned later that night in response to another Teletype message from Illinois, requesting another welfare check and asking for S.B. to call [***18] her mother. Since the child was sleeping, Edward told him he would have her call her mother in the morning.

Edward related that after January 1, 2001, S.B. ceased being animated and vocal with him, instead becoming withdrawn and difficult to engage in conversation. On numerous occasions he telephoned Norma's residence seeking to speak with S.B., but his calls went unanswered or unreturned.

Norma claimed Edward was drinking and abusing S.B. during the Florida trip, thus occasioning her telephoning the police. She admitted, however, that police found no evidence of either intoxication or abuse. Norma claimed that she always let S.B. speak with Edward when [*505] he telephoned or left a message for S.B. Her telephone records revealed, however, no return calls to Edward's home or cell phone numbers. Further, although she claimed that visitation between Edward and S.B. did not occur in 2001 only because of Edward's preference, several letters were introduced demonstrating that Edward continuously requested his scheduled visitation during that time.

Several witnesses, including family members and private investigators, testified as to the frequency and amount of Edward's alcohol consumption. [***19] Edward admitted drinking wine frequently and rum and coke occasionally, but denied being intoxicated or drinking in S.B.'s presence. He said that his last alcohol consumption was about mid-February 2002, and that he had quit drinking because it had become an issue.

[**723] The court declined to conduct an *in camera* interview with S.B. on the issue of whether she was abused by Edward in Florida because there was a meaningful risk of putting the 10-year-old child in a position of blaming herself for the outcome of the case. The court noted that "I can't possibly put that child through it. I'm not going to have her come into this courtroom."

Norma admitted knowing Parmod Malik, an airline pilot, for 15 to16 years, and said they planned on getting married some day. She moved into a home in St. Charles owned by Malik, and admitted that Malik stayed overnight there with her on occasion since January 2001, and that they had sexual relations on two of his visits. Nonetheless, they maintained separate residences and have not vacationed together. Neither Norma nor Malik keeps personal belongings in the home of the other. Each is responsible for his or her own expenses and home maintenance, and [***20] they do not commingle any funds. Although Norma admitted writing checks to Malik, she claimed they were rental payments on the St. Charles [*506] home. A private investigator employed by Edward testified that he observed Malik and Norma kissing and hugging on several occasions. He also saw Malik enter Norma's home several times, but did not see him leave.

At the close of the hearing, child representative Bush offered his sealed report in evidence. The court allowed its admission over Norma's objection that it contained hearsay and that she had been denied the right to cross-examine Bush.

Bush's report described his interviews with S.B., Edward, and Norma, and various school and medical records provided by the parties, as well as his observations of visitations between S.B. and Edward. S.B. relat-

ed to Bush that she enjoyed the Florida trip and denied that any abuse occurred. S.B. said she did not want to visit Edward because he gets drunk and she feared he would hurt her. She described recollections of Edward coming home drunk and "poking her in the eyes and stepping on her toes" when she was smaller. She admitted she has never seen him drink alcohol and could not articulate any reason for [***21] her fears. Additionally, Bush attached the first written report of Dr. Blechman and the written report of Dr. Mark Goldstein, a psychologist who had completed a court-ordered child custody evaluation prior to the judgment of dissolution. The report concluded with Bush's recommendation that physical custody of S.B. be transferred to Edward.

The trial court found that Edward had proved, by clear and convincing evidence, that S.B.'s present environment seriously endangered her physical, mental, moral or emotional health, and that it was in S.B.'s best interests that Edward be awarded sole custody immediately. The court abated visitation between S.B. and Norma until further order of court, finding S.B. would be seriously endangered by visitation. The court directed Edward and S.B. to continue therapy with Dr. Hatcher [*507] and directed Edward not to consume alcohol until further order of the court. The court denied Edward's petition to terminate unallocated support and discharged the rule to show cause against Norma. The court found no just cause to delay enforcement or appeal, pursuant to *Supreme Court Rule 304(a)* (155 Ill. 2d R. 304(a)).

In announcing the ruling, the trial court said that [***22] it was based on its review of the pleadings and orders in the file, the exhibits, the substance and credibility of the expert testimony, the substance and credibility of the parties' testimony, and the testimony of nonparty witnesses, as well as its review of the child representative's report. The court said it would "throw out [**724] the words 'parental alienation syndrome,' " basing its findings instead on the standard set out in section 602(a)(8) of the Act (*750 ILCS 5/602(a)(8)* (West 2002)), namely, "The willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the parents and child." Norma appealed and Edward cross-appealed.

The appellate court, in an opinion published in part (166 Ill. 2d *R. 23*), affirmed both the change of custody and the denial of Edward's petition to terminate unallocated support. *342 Ill. App. 3d at 215.* We allowed Norma's petition for leave to appeal. 177 Ill. 2d *R. 315.* Edward seeks cross-relief on the termination of support issue. 155 Ill. 2d *R. 318.* We also granted leave to Justice For Children, a national child advocacy organization, and to Richard L. Ducote, a member [***23] of the Louisiana bar, to file *amicus curiae* briefs in support of Norma. 155 Ill. 2d *R. 345.*

ANALYSIS

In her petition for leave to appeal, Norma raised four points relied on for reversal. Those points, as described in her petition, were: (1) the trial court committed reversible error in ruling that section 506 of the Act (*750 ILCS 5/506* [*508] (West 2002)) was constitutional and in admitting and considering the child representative's report, and in modifying custody; (2) the trial court should not have permitted the child representative's undisclosed witness (Deputy Young) to testify; (3) the trial court committed reversible error in failing to interview the minor child; and (4) the trial court committed reversible error in failing to bar the parental alienation syndrome testimony of Dr. Gardner. In her brief, Norma asserts additional grounds for reversal: (1) the trial court's rulings on the *section 2-615* and *2-619* motions, (2) the order barring Dr. Johnson from testifying, and (3) the limitation of the scope of another witness' testimony.

Supreme Court Rule 315(b) provides that a party's petition for leave to appeal "shall contain *** (3) a statement [***24] of the points relied upon for reversal of the judgment of the Appellate Court." 177 Ill. 2d R. 315(b)(3). Failure to raise an issue in the petition for leave to appeal may be deemed a waiver of that argument. *Federal Deposit Insurance Corp. v. O'Malley, 163 Ill. 2d 130, 154, 643 N.E.2d 825, 205 Ill. Dec. 534 (1994).* Adherence to *Rule 315(b)(3)* is not a jurisdictional prerequisite to our review of an issue; it is a principle of administrative convenience. *Dineen v. City of Chicago, 125 Ill. 2d 248, 265, 531 N.E.2d 347, 126 Ill. Dec. 52 (1988).* In this case, however, we will consider only the points raised in the petition for leave to appeal. The additional points urged as grounds for reversal in Norma's brief were thoroughly and thoughtfully discussed in the unpublished portions of the appellate court's opinion, and we find no sufficient justification to overlook the administrative requirements of *Rule 315* in this instance. We therefore deem those arguments to be waived. *Hansen v. Baxter Healthcare Corp., 198 Ill. 2d 420, 429, 764 N.E.2d 35, 261 Ill. Dec. 744 (2002).* We turn now to the issues properly preserved for review.

Section 506 and Procedural Due Process

Norma argues [***25] that *section 506 of the Act* is unconstitutional as applied in her case because she was denied [*509] the opportunity to cross- examine the child representative, who functioned as both an advocate and a fact finder and whose written report was relied on by the trial court in its findings. The standard of review of the constitutionality of a statute is *de novo. People v. Masterson, 207 Ill. 2d 305, 318, 798 N.E.2d 735, 278 Ill.*

Dec. 351 (2003). [**725] Statutes are presumed constitutional, and the party challenging the validity of a statute has the burden of clearly establishing that it is unconstitutional. *In re Curtis B., 203 Ill. 2d 53, 58, 784 N.E.2d 219, 271 Ill. Dec. 1 (2002).* The strong presumption of constitutionality requires courts to construe statutes in order to uphold their constitutionality whenever reasonably possible. *Hill v. Cowan, 202 Ill. 2d 151, 157, 781 N.E.2d 1065, 269 Ill. Dec. 875 (2002).*

Section 506 provides, in pertinent part:

> (a) Duties. In any proceedings involving the support, custody, visitation, education, parentage, property interest, or general welfare of a minor or dependent child, the court may, on its own motion or that of any party, and subject to the terms [***26] or specifications the court determines, appoint an attorney to serve in one of the following capacities:
>
> * * *
>
> (3) as a child's representative whose duty shall be to advocate what the representative finds to be in the best interests of the child after reviewing the facts and circumstances of the case. The child's representative shall have the same power and authority to take part in the conduct of the litigation as does an attorney for a party and shall possess all the powers of investigation and recommendation as does a guardian ad litem. The child's representative shall consider, but not be bound by, the expressed wishes of the child. *** The child's representative shall not disclose confidential communications made by the child, except as required by law or by the Rules of Professional Conduct. The child's representative shall not be called as a witness regarding the issues set forth in this subsection." *750 ILCS 5/506(a)(3)* (West 2002).

In his written report, child representative Bush described his observations of visitation between Edward [*510] and S.B., recounted S.B.'s version of the events in Florida as well as her recollections of Edward [***27] coming home drunk and "poking her in the eyes and stepping on her toes" when she was smaller. The report was admitted in evidence, but Norma was unable to cross-examine Bush on his observations and the basis for his recommendations because of the clear statutory prohibition against calling him as a witness. Thus, Norma argues that she was deprived of a meaningful opportunity to be heard on a matter implicating a fundamental liberty interest, thereby violating her right to procedural due process of law as guaranteed by the *fourteenth amendment to the United States Constitution* (*U.S. Const., amend. XIV*) and *section 2 of article I of the 1970 Illinois Constitution* (*Ill. Const. 1970, art. I, § 2*).

The appellate court construed the statute to allow calling the child's representative as a witness if the representative directly witnesses relevant facts and circumstances used to support a recommendation, because the representative has then "stepped out of his attorney role." *342 Ill. App. 3d at 214.* In that instance, the court reasoned, the representative has become a witness who may be called and questioned at trial, as any other witness, under the terms or specifications as [***28] determined by the court. The appellate court held that *section 506(a)* does not deny a party procedural due process and is not unconstitutional because it can be interpreted to allow a party to request disclosure by the child representative of underlying factual matters or to cross-examine the child representative when the representative acts as a witness. *342 Ill. App. 3d at 214.* [**726] The court further held that this interpretation may be reconciled with *Rule 3.7 of the Illinois Rules of Professional Conduct* (134 Ill. 2d R. 3.7), prohibiting an attorney from being both a witness and an advocate for his client, because in such circumstances the court is [*511] authorized, under *section 506(a)(3)*, to appoint another attorney to represent the child. *342 Ill. App. 3d at 214.*

The appellate court held that the trial court erred in denying Norma's request to examine Bush, to the extent that the representative's recommendation was based on his observations as a witness. The court reasoned, however, that the error was harmless because it did not play a significant role in the trial court's ruling. The trial court recited that it would [***29] consider the report "for what it's worth" along with many other factors and,

therefore, any error in considering the report was not prejudicial. *342 Ill. App. 3d at 214-15.*

Norma argues before us that the appellate court's statutory construction is unreasonable because it disregards the express, unambiguous language prohibiting calling the child's representative as a witness "regarding the issues set forth" in *section 506(a)(3)*. Edward argues that the statute limits those issues to the expressed wishes of the child, confidential communications made by the child, and the training and experience of the child representative. According to Edward, there is no express prohibition on questioning the representative on the factual basis for his recommendations or on his observations in coming to a particular recommendation.

The challenged statute provides that the child representative's duty shall be "to advocate what the representative finds to be in the best interests of the child after reviewing the facts and circumstances of the case," and further provides that the representative "shall possess all the powers of investigation and recommendation as does a guardian ad litem. [***30] " *750 ILCS 5/506(a)(3)* (West 2002).

We agree with Norma that the statutory language is clear and unambiguous. The "issues set forth" in *section 506(a)(3)* clearly include the duty to advocate what the representative finds to be in the child's best interests [*512] and the power to investigate and recommend in the manner of a guardian *ad litem*. Where the language of a statute is clear and unambiguous, a court must give effect to the plain and ordinary meaning of the language without resort to other tools of statutory construction. *Raintree Homes, Inc. v. Village of Long Grove, 209 Ill. 2d 248, 255, 807 N.E.2d 439, 282 Ill. Dec. 815 (2004)*. The representative's observations and conversations with the parties, witnesses, and S.B. were clearly within the statutory ambit barring him as a witness. Thus, the appellate court's statutory construction was error, and we must address the issue of whether procedural due process requires allowing the representative to be called as a witness.

In *Mathews v. Eldridge, 424 U.S. 319, 47 L. Ed. 2d 18, 96 S. Ct. 893 (1976)*, the Supreme Court held that "identification of the specific dictates of due process generally [***31] requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews, 424 U.S. at 335, 47 L. Ed. 2d at 33, 96 S. Ct. at 903.*

[**727] The private interest involved here is the right of parents to the companionship, care, custody, and management of their children. In *Lassiter v. Department of Social Services, 452 U.S. 18, 27, 68 L. Ed. 2d 640, 649-50, 101 S. Ct. 2153, 2159-60 (1981)*, the Supreme Court held that right to be an important interest, warranting deference and protection, absent a powerful countervailing interest. We have also recently held that one of the fundamental rights protected under the *fourteenth amendment* is the right of parents to make decisions concerning the [*513] care, custody, and control of their children without unwarranted [***32] state intrusion. See *Wickham v. Byrne, 199 Ill. 2d 309, 316, 769 N.E.2d 1, 263 Ill. Dec. 799 (2002)*. Further, in *In re Andrea F., 208 Ill. 2d 148, 165, 802 N.E.2d 782, 280 Ill. Dec. 531 (2003)*, a case involving termination of parental rights, this court held that parents have a fundamental due process right to the care, custody and control of their children.

In Norma's case, her right to the companionship, care, custody, and management of S.B. was seriously impacted. Custody of the child was taken from her and, for a period of time, she was denied any visitation. These changes seriously and unfavorably altered Norma's previous unfettered exercise of her custodial rights. We hold, therefore, that a fundamental liberty interest is implicated in this case.

Next, we must consider whether the statutory prohibition against calling the child's representative as a witness created a risk of erroneous deprivation of Norma's custodial rights. The representative's findings, conclusions, and recommendations were all adverse to Norma's interests. Without the important tool of cross- examination, Norma's means of challenging his observations, conclusions, and recommendations were impaired. [***33] We have held that the opportunity to cross-examine witnesses and to inspect the evidence offered against a party are part of guaranteeing the exercise of due process before an administrative tribunal. *Balmoral Racing Club, Inc. v. Illinois Racing Board, 151 Ill. 2d 367, 408, 603 N.E.2d 489, 177 Ill. Dec. 419 (1992)*. This is no less so in a custody hearing in a trial court. A child's representative is empowered by *section 506(a)(3)* to make a recommendation after reviewing the facts and circumstances of the case and to conduct his own investigation. The representative, like any other witness, is not immune from error in observation and from inadvertent bias. The proper weight to be given the report of a child's representative may be influenced by [*514] many factors, including his training and experience, the contacts between the representative, the parties, and the child, and the existence of any bias or tendency to favor

one gender of parent over the other. Cross-examination is likely to affect the trial court's assessment of the worth of the representative's recommendations in many cases.

In *People ex rel. Bernat v. Bicek, 405 Ill. 510, 526, 91 N.E.2d 588 (1950)*, this court upheld a [***34] constitutional challenge to the enforcement of the Domestic Relations Act of 1949 (Ill. Rev. Stat. 1949, ch. 37, pars. 105.19 through 105.36). A section of that statute granted unlimited authority to a master in chancery to investigate all matters relating to an inquiry, but provided no means to rebut any evidence adduced in the investigation, either by cross-examination or presentation of contrary evidence. Noting that little, if any, protection was afforded parties from arbitrary recommendations based on *ex parte* evidence from witnesses without cross-examination, we held this to be a clear violation of due process of law. *Bernat, 405 Ill. at 526.*

[**728] The statute in the case before us suffers from the same infirmities as the statute in *Bernat.* A custodial parent challenging an adverse recommendation is deprived of perhaps the most effective means of doing so because the statute expressly prohibits the right to cross-examine the child representative. Clearly, this created a serious risk of erroneous deprivation of Norma's custodial rights. Thus, the second factor in the *Mathews* analysis is satisfied.

Allowing cross-examination would impose no fiscal or administrative [***35] burdens on the state, and it is not inimical to any government interest we can perceive. The third *Mathews* factor is, therefore, also satisfied.

The representative's report was received in evidence, read, and relied on by the trial court and, thus, Norma's right to procedural due process was denied. We therefore [*515] hold that *section 506(a)(3)* is unconstitutional as applied in this case.

Even though the application of the statute unconstitutionally deprived Norma of her due process right to cross-examine child representative Bush, that holding is not dispositive, for even errors of a constitutional dimension may be harmless. See *People v. Lofton, 194 Ill. 2d 40, 61, 740 N.E.2d 782, 251 Ill. Dec. 496 (2000).* We still must determine whether the deprivation of her right to cross-examine Bush requires reversal of the trial court's modification of custody.

Modification of Custody

Section 610 of the Act allows modification of a prior custody judgment, absent consent, only if the court finds, by clear and convincing evidence, upon facts that have arisen since or were unknown at the time of prior judgment, that modification is necessary to serve the best interests of the child. [***36] *750 ILCS 5/610* (West 2002). The trial court found that S.B.'s present environment seriously endangered her physical, mental, moral or emotional health and that a substantial change in circumstances had been proved by clear and convincing evidence. The court expressly considered the standards for determining best interests set out in *section 602 of the Act*, including "(8) the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child." *750 ILCS 5/602(a)(8)* (West 2002). The court based its conclusion that a change in custody was warranted on a review of all the testimony and evidence, including the representative's report and its assessment of witness credibility.

The standard of review of custody modification judgments is the manifest weight of the evidence. *In re Marriage of Cotton 103 Ill. 2d 346, 356, 469 N.E.2d 1077, 83 Ill. Dec. 143 (1984).* The trial court is in the best position to review the evidence and to weigh the credibility of the witnesses. *Cotton, 103 Ill. 2d* [*516] *at 356.* In determining whether a judgment is contrary to the [***37] manifest weight of the evidence, the reviewing court views the evidence in the light most favorable to the appellee. *In re Marriage of Divelbiss, 308 Ill. App. 3d 198, 206, 719 N.E.2d 375, 241 Ill. Dec. 514 (1999).* Where the evidence permits multiple reasonable inferences, the reviewing court will accept those inferences that support the court's order. *Nemeth v. Banhalmi, 125 Ill. App. 3d 938, 963, 466 N.E.2d 977, 81 Ill. Dec. 175 (1984).* A custody determination, in particular, is afforded "great deference" because " the trial court is in a superior position to judge the credibility of the witnesses and determine the best interests of the child." *In re Marriage of Gustavson, 247 Ill. App. 3d 797, 801, 617 N.E.2d 1313, 187 Ill. Dec. 592 (1993).*

[**729] All of the expert testimony supports the conclusion that Norma had consistently failed to facilitate and encourage a close and continuing relationship between S.B. and Edward. Dr. Blechman, the court-appointed clinical psychologist, testified that Norma had engaged in a systematic pattern of undermining Edward with S.B. and that only a change of custody to Edward was in the child's best interests. Dr. Shapiro, the psychologist who evaluated Norma at the court's [***38] request, found that Norma was openly distrustful and untruthful in standardized testing and that she did not encourage a close relationship between S.B. and Edward. Dr. Hatcher, the court-appointed therapist, described acute emotional distress in S.B. caused by the mother's activities, requiring a change in custody. He found no evidence that Edward had neglected or harmed the child in any way, physically, emotionally, or psychologically. Dr. Gardner, Edward's retained expert, testified that Norma had alienated S.B. from her father and that a change of custody was warranted.

Although evidence of Edward's drinking, including his own admissions, was admitted, Dr. Kennelly, who evaluated Edward pursuant to Norma's *Rule 215* request, [*517] could find no evidence that Edward was alcoholic or psychologically impaired in any way. The court, in its judgment modification, nevertheless directed Edward to abstain from the use of alcohol until further order.

The court announced that it found Norma's testimony to be inventive, untruthful, manipulative, and self-serving. It found that she did not recognize or take responsibility for her actions and the resultant damage done to the child and the child's [***39] relationship with her father.

Despite the clear manifest weight of the expert testimony and the credibility assessments properly made by the trial court, Norma asserts that the admission of the representative's report tainted the entire proceedings. She points to no statements in the report, however, that are inconsistent with the evidence at trial. Our review of the report confirms that it is merely cumulative of the testimonial and documentary evidence. Norma makes no argument before us on the effect the denial of her right to cross-examine Bush had on the outcome of the trial. She complains that the report is "riddled with hearsay," yet she does not identify the purported hearsay statements and she does not describe any prejudicial effect resulting from the report's admission. A reviewing court is entitled to have issues clearly defined with relevant authority cited. See *Sterling Finance Management, L.P. v. UBS PaineWebber, Inc., 336 Ill. App. 3d 442, 449 n.3, 782 N.E.2d 895, 270 Ill. Dec. 336 (2002)*. Further, *Supreme Court Rule 341(e)(7)* requires that argument "shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages [***40] of the record relied on." 188 Ill. 2d R. 341(e)(7). Here, Norma fails to give this court an adequate basis to grant her relief on this issue.

The written report was completed and furnished to the parties in November 2001, three months before trial. Although Norma could not cross-examine Bush, she was [*518] apprised of the persons interviewed, the observations made, and the reports relied on as the basis for his recommendation. She presented no evidence at trial to rebut Bush's findings, focusing instead on evidence of Edward's drinking.

The appellate court found that the representative's report did not play a significant role in the trial court's ruling and, therefore, did not affect the outcome of the trial. *342 Ill. App. 3d at 214*. Our review of the report confirms that none of Bush's observations, [**730] conclusions, and recommendations were inconsistent with the evidence at trial. Norma has not demonstrated that consideration of the report by the court was prejudicial, or even that it affected the outcome. Accordingly, we cannot say that its admission tainted the proceedings. We hold, therefore, that the denial of due process in failing to allow cross-examination of child representative [***41] Bush was harmless error and that the judgment changing custody is not against the manifest weight of the evidence.

Dr. Gardner's Parental Alienation Syndrome Testimony

Norma argues that Dr. Gardner's testimony did not satisfy the reliability requirements of *Frye v. United States, 54 App. D.C. 46, 293 F. 1013 (D.C. Cir. 1923)* and, thus, should have been barred. In *Frye*, the court observed:

> "Just when a scientific principle or discovery crosses the line between the experimental and demonstrable stages is difficult to define. Somewhere in this twilight zone the evidential force of the principle must be recognized, and while courts will go a long way in admitting expert testimony deduced from a well-recognized scientific principle or discovery, the thing from which the deduction is made must be sufficiently established to have gained general acceptance in the particular field in which it belongs." *Frye, 293 F. at 1014*.

The "general acceptance" standard has been adopted by this court. *People v. Eyler, 133 Ill. 2d 173, 211, 549 N.E.2d 268, 139 Ill. Dec. 756 (1989)*. We have recently reaffirmed the applicability of that [*519] standard in [***42] *Donaldson v. Central Illinois Public Service Co., 199 Ill. 2d 63, 77, 767 N.E.2d 314, 262 Ill. Dec. 854 (2002)*. The trial court will apply the *Frye* test only if the scientific principle, technique, or test offered by the expert to support his or her conclusion is "new" or "novel." *People v. Basler, 193 Ill. 2d 545, 550-51, 740 N.E.2d 1, 251 Ill. Dec. 171 (2000)*. The trial court in this case made no specific finding on the issue of whether parental alienation syndrome is a new or novel principle. No Illinois reviewing court has considered the question of the general acceptance of PAS.

Evidence at the *Frye* hearing established that the syndrome had been described in peer-reviewed literature dating from the late 1980s. Dr. Barden, the psychologist proffered as an expert on the issue of general acceptance in the field, testified that the term "parental alienation syndrome" is not a novel principle, being first referenced by the American Psychological Association in 1994. He

testified that PAS is a recognized condition and generally accepted in the field of psychology. Whether PAS remains a new or novel concept several years after it was first described in the literature, the [***43] only evidence the trial court heard was that it is generally accepted in the field of psychology. Norma presented no evidence to the contrary.

Despite Norma's failure to present any evidence in opposition to the PAS theory, Norma and her *amici* argue that PAS is "junk science" and cite cases from other jurisdictions rejecting its admissibility. See, *e.g.*, *Wiederholt v. Fischer, 169 Wis. 2d 524, 485 N.W.2d 442 (App. 1992)*; *Hanson v. Spolnik, 685 N.E.2d 71, 84 (Ind. App. 1997)* (Chezem, J., concurring); *People v. Loomis, 172 Misc. 2d 265, 658 N.Y.S.2d 787 (1997)*. In *People v. Fortin, 184 Misc. 2d 10, 14, 706 N.Y.S.2d 611, 613 (2000)*, PAS testimony was proffered by the defendant in a rape prosecution. The trial court conducted a *Frye* hearing, noting that there was no existing authority in New York [*520] for the admission of PAS testimony and also noting a split in authority from other jurisdictions. *Fortin, 184 Misc. 2d at* [**731] *13-14, 706 N.Y.S.2d at 613-14*. The defendant presented general acceptance testimony from Dr. Richard Gardner, described as the "leading expert in the field." *Fortin, 184 Misc. 2d at 14, 706 N.Y.S.2d at 614.* [***44] The court noted that Dr. Gardner testified on cross-examination:

> "Although the concept of scientific proof may be of importance in such fields as chemistry, physics and biology, the concept is not as applicable in the field of psychology; especially with regard to issues being dealt with in such areas as child custody disputes, and sex abuse accusations."

Fortin, 184 Misc. 2d at 12, 706 N.Y.S.2d at 613.

In *Fortin*, Dr. Gardner was the only witness who testified in support of the general acceptance of PAS. The court held that the defendant had not established that PAS had gained general acceptance in the professional community. *Fortin, 184 Misc. 2d at 15, 706 N.Y.S.2d at 614.*

Dr. Gardner and PAS have been harshly criticized by scholarly writers. See, *e.g.*, C. Wood, *The Parental Alienation Syndrome: A Dangerous Aura of Reliability, 27 Loy. L.A. L. Rev. 1367 (June 1994)*; C. Bruch, *Parental Alienation Syndrome & Parental Alienation: Getting it Wrong in Child Custody Cases, 35 Fam. L.Q. 527 (2001).* Critics have pointed to many flaws in the theory and have challenged Dr. Gardner's expertise and motivation. While [***45] we acknowledge Norma's arguments on appeal, we note that no PAS critics testified at the *Frye* hearing in this case, nor was any other testimony presented in opposition to the general acceptance of PAS.

We observe, however, that the evidence amply supported the trial court's conclusion that S.B. did not enjoy "a close and continuing relationship" with her father under *section 602* (*750 ILCS 5/602* (West 2002)). Moreover, the evidence showed that, as a result of the damaged relationship with her father, S.B. suffered emotional [*521] distress requiring therapy. In its ruling, the trial court announced that it would "throw out the words 'parental alienation syndrome.'" In expressly disclaiming any reliance on the PAS theory, the trial court instead specifically applied the *section 602* standard of the Act (*750 ILCS 5/602* (West 2002)), finding that Norma interfered with S.B.'s ability to build a "close and continuing relationship" with her father.

Accordingly, even though the trial court, in its pretrial ruling, found PAS generally accepted in the relevant scientific community, the record clearly demonstrates that Dr. Gardner's PAS testimony [***46] was not a basis for the trial court's judgment. Thus, we conclude that, whatever the merits of the PAS theory, the court's ruling was not dependent on any finding that PAS was present in this case. We therefore need not review the trial court's general acceptance determination and we express no opinion on the validity of that finding.

Failure to Interview the Child in Chambers

Norma argues that the trial court erred in failing to conduct an *in camera* interview with S.B. because the child's account of the Florida incident was a key point in the case. Dr. Blechman acknowledged that S.B. told him her father had struck her, although he chose not to believe her. Thus, Norma contends the *in camera* interview could have uncovered the truth, and it is possible that it might have changed the outcome of the case. We note that this argument is not supported by any citation to legal authority as required by *Supreme Court Rule 341(e)(7)* (188 Ill. 2d R. 341(e)(7)).

Section 604(a) of the Act provides that the court *may* interview the child in chambers [**732] to ascertain the child's wishes as to the custodian and as to visitation. *750 ILCS 5/604(a)* (West [***47] 2002). That statute, however, provides no specific authority to conduct *in camera* interviews on other subjects. Norma argues that the court should have [*522] questioned S.B. on the Florida incident. She was not prevented, however, from calling the child as a witness on that subject. In any event, the standard of review on the decision to conduct

an *in camera* interview is abuse of discretion. *In re Marriage of Johnson, 245 Ill. App. 3d 545, 554, 614 N.E.2d 1302, 185 Ill. Dec. 617 (1993).*

The trial court declined to conduct an *in camera* interview of S.B. because of its concern that she would be put in the position of blaming herself for the outcome. In an unpublished portion of its opinion, the appellate court agreed that risk was a meaningful one. The court also noted:

> Further, there was other evidence in this case related to the issue of whether respondent struck the child and under what circumstances. Additionally, the prejudice to petitioner in the trial court's failing to ask the child about the alleged incident is merely speculative as we cannot assume the child would have answered in a manner favorable to petitioner. The bottom line is that the trial court clearly [***48] expressed its concern on the record in striking the balance in favor of not conducting the interview. We cannot say the balance struck by the trial court was an abuse of discretion."
>
> We agree with the appellate court on this issue and hold that the failure to conduct an interview in chambers was not an abuse of discretion.

Deputy Young's Testimony

Norma's final argument is that the trial court erred in allowing the child's representative to call Deputy Young as a witness because his name was not disclosed by Bush as a witness he intended to call at trial. It is within the trial court's discretion to decide whether evidence is relevant and admissible, and a court's determination on that issue will not be reversed absent a clear abuse of discretion. *People v. Morgan, 197 Ill. 2d 404, 455, 758 N.E.2d 813, 259 Ill. Dec. 405 (2001).*

On December 20, 2001, all parties were ordered to [*523] provide opposing counsel a list of witnesses each intended to call at trial. Bush did not provide a list of witnesses, but was permitted to take the telephonic evidence deposition of Deputy Young during the trial on April 15, 2002. Norma claims that because Deputy Young's testimony related to [***49] the Florida visitation incident, the prejudice to her is manifest. The appellate court held, however, that the lack of disclosure was not prejudicial because she was aware of the investigation by Florida authorities and had access to Deputy Young long before he was disclosed as a witness. The appellate court did not deem Deputy Young's testimony, limited to the issue of the Florida incident, significant enough to have affected the outcome concerning custody.

We recognize the importance of compliance with discovery orders. To prevent surprise or prejudice, and where demonstrated harm results to a party, we will not hesitate to grant relief. Here we agree with the appellate court that Norma has not demonstrated any prejudice resulting from Deputy Young's testimony. She was aware of his involvement long before trial began. Her counsel conducted an extensive and effective cross-examination, resulting in the deputy's admissions that he could not recall asking S.B. if her father had struck her and that he did not examine the parts of her body covered by clothing. We hold, therefore, that the court did not abuse its discretion in allowing this witness to testify at trial.

[**733] Cross-Relief

Edward [***50] complains that the trial court erred in failing to grant his petition to terminate unallocated maintenance and support because the evidence established the existence of a resident, continuing, conjugal relationship between Norma and Parmod Malik. The standard of review of a support order is whether it is an abuse of discretion, or whether the factual predicate for the decision is against the manifest weight of the evidence. *Slagel* [*524] *v. Wessels, 314 Ill. App. 3d 330, 332, 732 N.E.2d 720, 247 Ill. Dec. 665 (2000).* In other words, if the court's exercise of discretion has an evidentiary basis, then the reviewing court will consider the manifest weight of the evidence. Each case seeking termination of maintenance based on a recipient's conjugal cohabitation rests on its own facts, given the unique nature of each interpersonal relationship. *In re Marriage of Sappington, 106 Ill. 2d 456, 466, 478 N.E.2d 376, 88 Ill. Dec. 61 (1985).* It is the burden of the party seeking termination of maintenance to demonstrate that the former spouse is involved in a continuing, conjugal relationship. *Sappington, 106 Ill. 2d at 467.*

The appellate court reviewed the evidence and concluded [***51] that the trial court ruling was not against the manifest weight of the evidence. The court noted the evidence demonstrated that Norma and Malik were involved in an intimate, dating relationship. They spent time together, including dinner, movies, and walking. Malik admitted that on occasion he would drive one of Norma's luxury automobiles. Despite that evidence, the two maintained separate residences. Malik only stayed at Norma's home on a sporadic basis. The appellate court attributed no significance that Norma made

advance rental payments to Malik, or that he used some of these rental checks to pay for the home.

We agree that the trial court's determination that Norma and Malik were not in a resident, conjugal relationship is not against the manifest weight of the evidence. In *Sappington*, this court equated a conjugal relationship to a husband-and-wife-like relationship, whether or not sexual relations took place. *Sappington, 106 Ill. 2d at 467*. Norma and Malik did not live in the same residence, did not commingle funds, and did not vacation together. Therefore, the trial court could rationally conclude that Norma and Malik enjoyed a dating relationship not [***52] akin to marriage. Accordingly, the [*525] trial court has not abused its discretion in denying Edward's petition to modify unallocated support. Hence, we will not disturb the trial court's finding on this issue.

CONCLUSION

Section 506(a)(3) of the Act, as applied in this case, deprived Norma of procedural due process of law because her protected liberty interest in the care, custody, and control of her daughter was adversely affected by the statutory prohibition of calling the child's representative as a witness and cross-examining him. Nevertheless, in light of the overwhelming expert testimony supporting a modification of custody, and because the content of the representative's report was not inconsistent with the other evidence at trial, admission of the report was not prejudicial, and the error in failing to allow cross-examination was harmless.

In view of the sparse record challenging the general acceptance of the PAS principle, allowing Dr. Gardner's parental alienation syndrome testimony was not an abuse of discretion. We note, however, that PAS is now the subject of legal and [**734] professional criticism, and our holding in this case does not foreclose further challenges to the validity [***53] or general acceptance of that concept in future cases.

The trial court did not abuse its discretion in refusing to interview the child in chambers, in light of the court's expressed concern that the child might consider herself to blame for the outcome of the proceeding. Further, it was not an abuse of discretion to allow the taking and reading of the evidence deposition of Deputy Young because Norma was aware of his involvement in the case, thus resulting in no prejudice to her.

Finally, the order denying Edward's petition to modify the unallocated support judgment was not against the manifest weight of the evidence, and the trial court did not abuse its discretion in denying the petition.

[*526] We therefore affirm the judgment of the appellate court.

Affirmed.

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LexisNexis Headnotes:	HN1 (1), HN3 (1), HN5 (4), HN7 (1), HN8 (2), HN9 (2), HN10 (2), HN12 (35), HN13 (1), HN14 (1), HN15 (6), HN16 (1), HN17 (8)

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Affirmed by (CITATION YOU ENTERED):
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In re MARRIAGE OF ADAM KOSTUSIK,Petitioner-Appellant, and ANGIESZKA KOSTUSIK, Respondent-Appellee.

No. 1-05-1196

APPELLATE COURT OF ILLINOIS, FIRST DISTRICT, THIRD DIVISION

361 Ill. App. 3d 103*; *836 N.E.2d 147*; *2005 Ill. App. LEXIS 904*; *296 Ill. Dec. 732

September 14, 2005, Decided
September 14, 2005, Filed

SUBSEQUENT HISTORY: [***1] Released for Publication October 31, 2005.

PRIOR HISTORY: Appeal from the Circuit Court of Cook County. No. 04 D 330661. Honorable Veronica B. Mathein, Judge Presiding.

DISPOSITION: Petition for leave to appeal granted; affirmed.

COUNSEL: For APPELLANT: Roxanna M. Hipple, Kumor & Hipple, P.C., Dundee, IL.; Randy K. Johnson, Ariano, Hardy, Nyuli, Johnson et al., Elgin, IL.

For APPELLEE the Minor Child: Robert F. Harris, Kass A. Plain, Mary Brigid Hayes, Office of the Cook County Public Guardian, Chicago, IL.

JUDGES: JUSTICE THEIS delivered the Minion of the court. Quinn, P.J., and Greiman, J., concur.

OPINION BY: THEIS

OPINION

[**150] [*105] JUSTICE THEIS delivered the opinion of the court:

Petitioner, Adam Kostusik, petitions this court for leave to appeal pursuant to *Supreme Court Rule 306(a)(5)* (Official Reports Advance Sheet No. 26 (December 24, 2003), it 306(a)(5), eff. January 1, 2004), as an interlocutory order affecting the care and custody of an unemancipated minor. Petitioner seeks review of an interim order of child custody which awarded temporary custody of his son, Daniel, to his wife, respondent Angieszka Kostusik, during the pendency of their dissolution of marriage proceedings. [***2] The temporary custody order was entered after the Office of the Cook County Public Guardian, which was appointed as Daniel's representative (child's representative), filed an emergency motion for a change in temporary custody. In his petition, petitioner contends that the circuit court erred in awarding respondent temporary custody of Daniel because (1) the child's representative lacked standing to bring such a motion; and (2) it could not do so without an evidentiary hearing. For the following reasons, we grant petitioner's petition for leave to appeal, but affirm the order of the circuit court awarding respondent temporary custody of Daniel.

Petitioner filed a petition for dissolution of marriage against respondent on June 17, 2004. Therein, petitioner sought, *inter alia,* custody of Daniel, who was born on February 3, 2004. Along with the petition for dissolution of marriage, petitioner filed a petition for temporary custody of Daniel. Petitioner alleged that he had been the primary caregiver for Daniel during the marriage and that respondent was mentally ill and suicidal.

The same day, the court entered an *ex parte* emergency order of protection against respondent, granting [***3] temporary custody of Daniel to petitioner and prohibiting respondent from contacting petitioner or Daniel. The next day, respondent filed a *pro se* motion to vacate the order of protection, claiming that she was still breast-feeding Daniel and that the allegations upon which the order of protection were based were untrue.

On June 21, 2004, respondent, through counsel, filed a counterpetition for dissolution of marriage. Therein, respondent sought, *inter alia,* custody of Daniel, alleging

that she had been his primary caregiver since birth. Also on June 21, 2004, the court modified the emergency order of protection to provide respondent with supervised visits with Daniel.

[*106] The following day, respondent filed an emergency petition seeking the return of Daniel to her. Respondent maintained that she was in "regular" mental and emotional health and that she had never taken any action to harm either herself or her child. Respondent also indicated that because petitioner's mother was an illegal Polish immigrant, there was a threat that she would remove Daniel to Poland. By agreement, on June 25, 2004, the parties increased the amount of time respondent would be permitted to visit [***4] with Daniel.

On August 4, 2004, respondent filed another *pro se* motion seeking the return of Daniel to her. However, once respondent retained new counsel, that motion was withdrawn.

During August, Daniel was diagnosed with developmental disabilities. On September 30, 2004, respondent filed a petition to modify the June 25, 2004, custody order to grant her temporary custody of Daniel. Respondent alleged, *inter alia,* that petitioner was not attentive to Daniel's [**151] medical needs and that he made it difficult for her to take Daniel to medical appointments. Respondent also alleged that petitioner had limited involvement with Daniel and that it was actually petitioner's mother who was caring for him. Respondent attached the report of Cook County Supportive Services, which recommended that she be given custody of Daniel, but that petitioner be given liberal visitation. The court continued this motion until December 2, 2004, then again until January 31, 2005. In January, the court ordered discovery and a professional evaluation of Daniel pursuant to section 604(b) of the Illinois Marriage and Dissolution of Marriage Act (the Act) (*750 ILCS 5/604(b)* (West 2004)).

Meanwhile, on [***5] petitioner's motion, the court appointed the Office of the Cook County Public Guardian as Daniel's representative pursuant to section 506(a)(3) of the Act (*750 ILCS 5/506(a)(3)* (West 2004)). On March 25, 2005, the child's representative filed his own emergency motion requesting that respondent be given temporary custody. The motion cited the *section 604(b)* professional evaluation of Susan Schulson, which recommended that respondent be given temporary custody of Daniel and the power to make medical decisions on his behalf. Schulson further reported that petitioner refused to cooperate with the prescribed therapy for Daniel and refused to consent to his treatment. On March 22, 2005, Easter Seals informed Schulson that due to petitioner's failure to cooperate, Daniel would no longer be eligible for therapeutic services through Easter Seals. Alleging that the termination of the therapy with Easter Seals would result in irreparable harm to Daniel, the child's representative sought the change in custody. Petitioner neither objected to the motion nor requested an evidentiary hearing. On March 28, 2005, the circuit court granted the motion [*107] made by the child's representative and gave respondent [***6] temporary custody of Daniel as well as the authority to make medical decisions on his behalf.

On April 1, 2005, petitioner sought review of the temporary custody order by filing a "Notice of an Appeal pursuant to *Illinois Supreme Court Rules 306* and *306(A)* from an order entered by the Circuit Court of First Judicial Circuit, Cook County, Illinois, on March 28, 2005 to the Illinois Appellate Court - First Judicial District," in the circuit court. The matter was docketed as an expedited child custody appeal pursuant to *Rule 306A* (Official Reports Advance Sheet No. 7 (March 30, 2005), *R. 306A*, eff. March 18, 2005) in this court on April 18, 2005. Petitioner subsequently filed the record on April 27, 2005, and his opening brief on May 18, 2005.

The child's representative filed its brief in response to petitioner's on June 23, 2005. Therein, the child's representative contended, *inter alia,* that this court lacked jurisdiction to consider the appeal from the temporary custody order because the March 28, 2005, order was not a final order appealable under *Rule 306A* and petitioner failed to petition for leave to appeal on an interlocutory basis in accordance with the procedures of [***7] *Rule 306(a)(5)*. In response, petitioner filed, on July 7, 2005, a "Motion for Petition for Leave to Appeal Pursuant to *306A(a)* or Alternatively Petition for Leave to Appeal Pursuant to 306(a)(5) and Petition for Brief to Stand as Petition for Leave to Appeal, Instanter." In that motion, petitioner contended that he had complied with the procedures set forth in *Rule 306A* for expedited child custody appeals and, citing no authority, that "in the interest of justice and judicial economy," this court should permit him to petition for leave to appeal under either *Rule 306A* or *Rule 306(a)(5)*. The child's representative filed [**152] a response to that motion, contending that the temporary custody order does not fit within any of the four categories for which an automatic right to appeal exists under *Rule 306A* because it was not an initial final custody order, an order modifying child custody where a change in custody has been granted, a final order of adoption, or a final order terminating parental rights. The child's representative further contended that petitioner should have petitioned for leave to appeal pursuant to *Rule 306(a)(5)*.

On July 22, this court permitted petitioner to petition for [***8] leave to appeal pursuant to *Rule 306(a)(5)*. Petitioner requested that his opening brief be treated as

his petition for leave to appeal. The child's representative filed a response, initially contending that we lacked jurisdiction to entertain petitioner's petition for leave to appeal. Because petitioner was apparently confused by the new supreme court rules expediting child custody appeals, we will address why *Rule 306(a)(5)* [*108] is the proper vehicle for seeking review of interlocutory child custody orders in addition to addressing our jurisdiction.

It is well-established that except as specifically provided in the supreme court rules, this court is without jurisdiction to review judgments, orders and decrees that are not final. *Almgren v. Rush-Presbyterian-St. Luke's Medical Center, 162 Ill. 2d 205, 210, 642 N.E.2d 1264, 1266, 205 Ill. Dec. 147 (1994)*. Here, the March 28, 2005, order from which petitioner seeks to appeal was a *temporary* custody order. A temporary custody order pursuant to section 603(a) of the Act (*750 ILCS 5/603(a)* (West 2004)), by its very nature, is not a final, appealable order. *In re Marriage of Fields, 283 Ill. App. 3d 894, 901, 671 N.E.2d 85, 90, 219 Ill. Dec. 420 (1996)*; [***9] see also *Lewis v. Canty, 115 Ill. App. 3d 306, 308, 450 N.E.2d 864, 865, 71 Ill. Dec. 176 (1983)* (finding that denial of motion to vacate temporary custody order was not final). In fact, when the permanent custody order is entered, the temporary custody order is superseded. *Fields, 283 Ill. App. 3d at 901, 671 N.E.2d at 90*. Therefore, the March 28 temporary custody order can only be appealed on an interlocutory basis as provided for in the supreme court rules. *Lewis, 115 Ill. App. 3d at 308, 450 N.E.2d at 865*.

As we explained above, petitioner invoked both *Rule 306A* and *Rule 306* in his effort to obtain review of the March 28, 2005, temporary custody order. We will therefore address whether those rules confer the authority for petitioner to seek review of an interlocutory child custody order.

Rule 306A is a new supreme court rule that provides for expedited appeals in child custody cases. Official Reports Advance Sheet No. 7 (March 30, 2005), *R. 306A*, eff. March 18, 2005; *In re Marriage of Sproat, 357 Ill. App. 3d 880, 881, 830 N.E.2d 843, , 294 Ill. Dec. 431 (2005)*. The apparent intent behind [***10] *Rule 306A* was to promote stability for the affected families by producing swift rulings. *Sproat, 357 Ill. App. 3d at 883*.

Rule 306A provides for expedited review of the following four types of orders: "(1) initial final child custody orders, (2) orders modifying child custody where a change of custody has been granted, (3) final orders of adoption and (4) final orders terminating parental rights." Official Reports Advance Sheet No. 7 (March 30, 2005), *R. 306A(a)*, eff. March 18, 2005. Each of these four types of orders is a final order. [1] [**153] In addition, the Second District recently held that *rule 306A* does not make custody orders entered in dissolution of marriage [*109] proceedings final and immediately appealable before the dissolution is final. *Sproat, 357 Ill. App. 3d at 883*. Rather, *Rule 306A* addresses only new procedures to be followed by trial and appellate courts to ensure expedient review of child custody cases. *Sproat, 357 Ill. App. 3d at 883*.

1 The second category of orders, orders modifying custody judgments which effect a change in custody, are also final orders, even though the rule does not explicitly use the term final. This second category is an apparent reference to modification orders effected pursuant to section 610 of the Act (*750 ILCS 5/610* (West 2004)), which occur subsequent to an initial final custody order. See also *In re Custody of Purdy, 112 Ill. 2d 1, 5, 490 N.E.2d 1278, 1279-80, 96 Ill. Dec. 73 (1986)* (distinguishing Leopando and holding that an order changing, custody subsequent to a dissolution of marriage is final and appealable).

[***11] However, *Rule 306A(a)* further provides that, "in any other child custody cases in which the best interests of the child is involved including orders of visitation, guardianship[,] standing to pursue custody and interim orders of custody, a party may file a petition in accordance with the rules [for] seeking leave to appeal." Official Reports Advance Sheet No. 7 (March 30, 2005), it *306A(a)*, eff. March 18, 2005. This can only be understood as a directive to seek leave to appeal from interlocutory child custody orders pursuant to *Rule 306(a)(5)*, which specifically provides that a party may petition this court to review "interlocutory orders affecting the care and custody of unemancipated minors." Official [**154] Reports Advance Sheet No. 26 (December 24, 2003), R. 306(a)(5), eff. January 1, 2004. Thus, *Rule 306(a)(5)* is the vehicle by which to seek review of interlocutory child custody orders. See *In re Curtis B., 203 Ill. 2d 53, 63, 784 N.E.2d 219, 225, 271 Ill. Dec. 1 (2002)*; *In re Marriage of Leopando, 96 Ill. 2d 114, 120, 449 N.E.2d 137, 140, 70 Ill. Dec. 263 (1983)*; *In re Parentage of Melton, 321 Ill. App. 3d 823, 828, 748 N.E.2d 291, 295-96, 254 Ill. Dec. 845 (2001)*.

[***12] In addition to conferring the authority to seek review of certain interlocutory orders, *Rule 306* outlines the procedure to be followed in petitioning the appellate court for leave to appeal. Prior to 2004, *Rule 306(b)* established one procedure to be followed for all types of interlocutory appeals contained in *Rule 306(a)*. See Official Reports Advance Sheet No. 26 (December 24, 2003), R. 306(c), eff. January 1, 2004. That procedure provided that a party must file a petition for leave to

appeal in the appellate court within 30 days of the entry of the order from which review is sought, even in child custody matters. *In re Leonard R., 351 Ill. App. 3d 172, 174, 813 N.E.2d 1054, 1056, 286 Ill. Dec. 361 (2004).* That 30-day time limit was found to be jurisdictional such that a party's failure to file a petition for leave to appeal, or a least request an extension of time to do so pursuant to former *Rule 306(e)* (Official Reports Advance Sheet No. 26 (December 24, 2003), R. 306(f), eff. January 1, 2004 (renumbering subsections following the addition of [*110] the expedited procedures for child custody appeals)), within that time would preclude jurisdiction from vesting in the appellate [***13] court. *Miller v. Consolidated Rail Corp., 173 Ill. 2d 252, 258, 671 N.E.2d 39, 42-43, 219 Ill. Dec. 374 (1996)*; *Leonard R., 351 Ill. App. 3d at 174, 813 N.E.2d at 1056.*

However, about the same time that *Rule 306A* became effective, *Supreme Court Rule 306* was modified to include a new subsection (b), which provides a special procedure that parties seeking review of interlocutory child custody orders pursuant to *Rule 306(a)(5)* must follow. Official Reports Advance Sheet No. 26 (December 24, 2003), *R. 306*, eff. January 1, 2004. This new procedure applies only to orders appealable pursuant to *Rule 306(a)(5)*; the procedure for petitions for leave to appeal other orders under *Rule 306(a)* is provided for in subsections (c) through (i) of Rule 306. Official Reports Advance Sheet No. 26 (December 24, 2003), R. 306(b), eff. January 1, 2004.

The new procedure set forth in Rule 306(b)(1) changes the old procedure for petitioning for leave to appeal interlocutory child custody orders in two ways. First, *Rule 306* was modified to expedite the process of determining appeals of interlocutory orders affecting the care and custody of unemancipated minors. Official [***14] Reports Advance Sheet No. 26 (December 24, 2003), *R. 306*, eff. January 1, 2004. Amended *Rule 306(b)* shortens the time frame in which to file a petition for leave to appeal in the appellate court from 30 days of the date of the entry of the order from with review is sought to 5 "business days." Official Reports Advance Sheet No. 26 (December 24, 2003), R. 306(b), eff. January 1, 2004. In the event that the petition for leave to appeal is allowed, the rules further expedite the appeal process by providing that the time frames for filing any additional record or briefs shall be those set forth in *Rule 306A*. Official Reports Advance Sheet No. 7 (March 30, 2005), *R. 306A(a)*, eff. March 18, 2005 ("Upon granting of the petition by the appellate court, all said proceedings shall be subject to procedures set forth in this rule."); First District Local Rule 14(E), eff. July 1, 2004.

Second, *Rule 306(b)* was modified to include the requirement that the party seeking review file, in addition to its petition for leave to appeal in the appellate court, "[a] notice of interlocutory appeal substantially conforming to the notice of appeal in other cases * * * within the time allowed by this paragraph [***15] for filing the petition," in the circuit court. Official Reports Advance Sheet No. 26 (December 24, 2003), R. 306(b), eff. January 1, 2004. As a result of this additional requirement, the procedure for seeking review of interlocutory child custody orders now parallels the procedure for seeking review of temporary restraining orders. 188 Ill. 2d R. 307(d) ("Review of the granting or denial of a temporary restraining order or an order modifying, [*111] dissolving, or refusing to dissolve or modify a temporary restraining order * * * shall be by petition filed in the Appellate Court, but notice of interlocutory appeal * * * shall also be filed, within the same time for filing the petition."). The apparent intent behind the new procedures in *Rule 306(b)* is to promote the interests of justice by allowing for quicker review of these provisionary orders so that the cause may proceed to the determination of a permanent order more quickly. See *Friedman v. Thorson, 303 Ill. App. 3d 131, 136, 707 N.E.2d 624, 627, 236 Ill. Dec. 497 (1999)* (discussing the intent behind the addition of Rule 307(d), procedure expediting appeals of temporary restraining orders).

Therefore, in order to [***16] vest this court with jurisdiction, petitioner would have had to file a petition for leave to appeal the March 28, 2005, temporary custody order in this court, as well as a notice of interlocutory appeal in the circuit court, by April 4, 2005, which was five "business days" after March 28, 2005. Petitioner failed to do so. Instead, petitioner filed in the circuit court on April 1, 2005, a "Notice of an Appeal pursuant to *Illinois Supreme Court Rules 306* and *306(A)* from an order entered by the Circuit Court of First Judicial Circuit, Cook County, Illinois, on March 28, 2005 to the Illinois Appellate Court - First Judicial District." We must [**155] therefore determine whether petitioner's filing of a notice of appeal within the five-day time frame, instead of a petition for leave to appeal coupled with a notice of interlocutory appeal, was sufficient to invoke this court's jurisdiction.

The purpose of the notice of appeal is to inform the prevailing party of the litigation that the losing party is seeking review by a higher court. *Burtell v. First Charter Service Corp., 76 Ill. 2d 427, 433, 394 N.E.2d 380, 383-83, 31 Ill. Dec. 178 (1979).* As such, the notice of appeal is to [***17] be liberally construed and will confer jurisdiction when, considered as a whole, it fairly and adequately sets out the judgment complained of and the relief sought so that the prevailing party is advised of the nature of the appeal. *Burtell, 76 Ill. 2d at 433-34, 394 N.E.2d at 383.* Thus, as long as the substance of the notice is correct and the appellee suffers no prejudice, the absence of strict technical compliance with the form of

the notice is not fatal to a reviewing court's jurisdiction. *Burtell, 76 Ill. 2d at 434, 394 N.E.2d at 383.*

In determining whether petitioner's filing of a standard notice of appeal, rather than the required notice of interlocutory appeal, was sufficient to satisfy the notice of interlocutory appeal requirement in this case, we find this court's decisions resolving this issue in the context of temporary restraining orders to be instructive. For instance, in *City of Chicago v. First Bank of Oak Park, 178 Ill. App. 3d 321, 325, 533 N.E.2d 424, 426, 127 Ill. Dec. 552 (1988)*, we found a notice of appeal sufficient to provide notice of an interlocutory appeal where the notice of appeal [*112] clearly referenced [***18] the order to be appealed from, thereby informing the opposing party of the nature of the appeal. See also *City Elgin v. County of Cook 257 Ill. App. 3d 186, 200-01, 629 N.E.2d 86, 96-97, 195 Ill. Dec. 778 (1993)*, rev'd in part on other grounds, *169 Ill. 2d 53, 660 N.E.2d 875, 214 Ill. Dec. 168 (1995)* (finding notice sufficient to apprise parties and court that appellant sought review of interlocutory orders entered on two particular dates).

In the instant case, petitioner's notice of appeal clearly indicated that he was seeking review of the March 28, 2005, temporary custody order. Neither respondent nor the child's representative has been prejudiced by this notice of appeal because both parties' filings evidence that they clearly understand the nature of the review sought. We therefore find this notice sufficient to indicate that petitioner was seeking review of an interlocutory order.

We now turn to the effect of petitioner's failure to petition this court for leave to appeal, Shortly after *Rule 306(a)(5)* became effective in 1982, this court required that its procedures be strictly followed and found that its jurisdiction to review an order denying [***19] a change in temporary custody had not been properly invoked where the appellant filed a notice of appeal from the order rather than a petition for leave to appeal. *Lewis, 115 Ill. App. 3d at 308, 450 N.E.2d at 866.* However, since then, the supreme court has indicated that if this court finds that its jurisdiction to review custody orders has not been properly invoked, the court should "consider[] the propriety of the order under [what is now *Rule 306(a)(5)*] in order to resolve the custody question as quickly and economically as possible." *Purdy 112 Ill. 2d at 4, 490 N.E.2d at 1279.* Accordingly, the supreme court and this court have recharacterized certain appeals as petitions for leave to appeal pursuant to *Rule 306(a)(5)* where the parties seeking review have relied on erroneous law or erroneous cases in failing to invoke *Rule 306(a)(5).* Compare *Curtis B., 203 Ill. 2d at 63, 784 N.E.2d at* [**156] *225* (where party relied on unconstitutional statute making permanency orders in abuse and neglect proceedings final, court reconstrued notice of appeal as petition for leave to appeal pursuant to *Rule 306(a)(5)*), *Leopando, 96 Ill. 2d at 120, 449 N.E.2d at 140* [***20] (where party relied on erroneous case law permitting appeal of custody orders in dissolution of marriage proceedings as final orders pursuant to Rule 304(a), court reconstrued notice of appeal as petition for leave to appeal pursuant to *Rule 306(a)(5)*), and *In re Alexis H., 335 Ill. App. 3d 1009, 1014, 783 N.E.2d 158, 163, 270 Ill. Dec. 583 (2002)*, aff'd, on other grounds, *207 Ill. 2d 590, 802 N.E.2d 215, 280 Ill. Dec. 290 (2003)* (recharacterizing notice of appeal as petition for leave to appeal where there was case law upon which appellant could have relied in seeking review of order denying a petition to terminate [*113] parental rights as a final and appealable order under *Rules 301* and *303*, but denying leave to appeal), with *In re Alicia Z., 336 Ill. App. 3d 476, 493-94, 784 N.E.2d 240, 252-53, 271 Ill. Dec. 22 (2002)* (distinguishing Curtis B. and refusing to recharacterize appeal pursuant to *Rules 301* and 304(a) as petition for leave to appeal under *Rule 306(a)(5)* where "at the time [the appellant] appealed from the dismissal of his motion to modify custody here, no case or statute suggested that such an order was final and appealable [***21] * * * and [he] had no reason to believe that *Rules 301* and 304(a) would confer jurisdiction and that his noncompliance with *Rule 306* would be excused").

In the present case, petitioner was apparently confused by the new supreme court rules regarding child custody appeals when he sought review of the temporary custody order. As we noted earlier, petitioner's notice of appeal invoked both *Rule 306A* and *Rule 306.* At the time he filed his notice of appeal, there was no case law to explain the distinction between *Rule 306A* and *Rule 306*, or to explain that *Rule 306A* simply created expedited procedures and did not make any orders final and appealable that were not previously final and appealable. See *Sproat, 357 Ill. App. 3d at 883* (which was decided on June 10, 2005). Thus, when petitioner filed his notice of appeal, it was not unreasonable for him to believe that he was appealing from a final order pursuant to *Rule 306A* (see *Sproat, 357 Ill. App. 3d at 883*), which might have led him to believe that there was no need for him to petition for leave to appeal pursuant to *Rule 306(a)(5)* (see *Curtis B., 203 Ill. 2d at 63, 784 N.E.2d at 225*). [***22] However, petitioner also invoked *Rule 306*, which petitioner should have understood as requiring the filing of a petition for leave to appeal and a notice of interlocutory appeal. Nevertheless, because petitioner's appeal involves a question of child custody, which the supreme court has directed us to resolve "as quickly and economically as possible" (*Purdy, 112 Ill. 2d at 4, 490 N.E.2d at 1279*), we allowed petitioner's motion to treat his brief as his petition for leave to appeal pursuant to *Rule 306(a)(5)* and now find that petitioner's actions

were sufficient to invoke our jurisdiction. See *Curtis B., 203 Ill. 2d at 63, 784 N.E.2d at 225*; *Leapando, 96 Ill. 2d at 120, 449 N.E.2d at 140*; *Alexis H., 335 Ill. App. 3d at 1014, 783 N.E.2d at 163*; *Melton, 321 Ill. App. 3d at 828, 748 N.E.2d at 296*; see also *Allied American Insurance Co. v. Culp, 243 Ill. App. 3d 490, 492, 612 N.E.2d 41, 43, 183 Ill. Dec. 784 (1993)* (treating notice of appeal filed from order granting new arbitration as petition for interlocutory appeal pursuant to *Rule 306(a)(1)*); *In re Marriage of Agustsson, 223 Ill. App. 3d 510, 517, 585 N.E.2d 207, 212, 165 Ill. Dec. 811 (1992)* [***23] [**157] (treating notice of appeal from order setting cause for new hearing as petition for leave to appeal pursuant to *Rule 306(a)(1)*).

[*114] However, in doing so, we observe that petitioner's error in filing a notice of appeal instead of a petition for leave to appeal coupled with a notice of interlocutory appeal has worked contrary to the goal of resolving custody questions as quickly and economically as possible. After this appeal was docketed on April 18, the matter went through briefing until the end of June, when the child's representative first raised the question of jurisdiction in its response brief. If petitioner had followed the proper procedure by filing a petition for leave to appeal in this court and a notice of interlocutory appeal in the circuit court by April 4, 2005, this matter could have been resolved months ago. Nevertheless, we believe the circumstances here warrant granting petitioner's motion to treat his brief as a petition for leave to appeal. However, in the future, we urge parties to follow the procedures set forth in *Rule 306(b)*, which we explained above.

Once a reviewing court excuses the failure to file a petition for leave to appeal, it still must determine whether [***24] to grant the petition for leave to appeal. *Alexis H., 335 Ill. App. 3d at 1014, 783 N.E.2d at 163*. Whether to grant the petition for leave to appeal rests within the discretion of the reviewing court. *Alexis H., 335 Ill. App. 3d at 1014, 783 N.E.2d at 163*. Here, because petitioner's petition raises two issues of first impression regarding the role of a child's representative in a dissolution of marriage proceeding, we grant the petition. Cf. *Alexis H., 335 Ill. App. 3d at 1014, 783 N.E.2d at 163*.

We now turn to the issues petitioner raises. First, petitioner contends that the circuit court erred in awarding respondent temporary custody based on the motion of the child's representative. Petitioner maintains that it was improper for the child's representative to bring the motion because the child's representative is not one of the persons authorized to commence a custody proceeding under section 601(b) of the Act (*750 ILCS 5/601(b)* (West 2004)).

The child's representative initially responds that petitioner has waived any argument regarding his emergency motion for a change in temporary custody because he failed to object to it. [***25] However, the rule of waiver is a limitation on the parties, and not on the reviewing court. *In re Madison H., 215 Ill. 2d 364, 371, 830 N.E.2d 498, 294 Ill. Dec. 86 (2005)*. Because this is a matter affecting child custody and an issue of first impression, we decline to apply the rule of waiver and will consider this issue on the merits. *Madison H., 215 Ill. 2d at 371*.

We find petitioner's reliance on *section 601(b)* of the Act to be misplaced. The fact that *section 601(b)* does not give the child's representative the authority to commence custody proceedings is irrelevant here because the proceedings in the present case were properly commenced by petitioner. *750 ILCS 5/601(b)(1)(i)* (West 2004). [*115] Once the proceedings have been commenced, as the child's representative correctly points out, *section 506* of the Act provides for the representation of children. *750 ILCS 5/506(a)* (West 2004). Specifically, section 506 provides for representation of children in three different ways: (1) an attorney to represent the child; (2) a guardian *ad litem* to address issues the court delineates; or (3) a child's representative, "whose duty shall be to advocate what the representative [***26] finds to be in the best interests of the child after reviewing the facts and circumstances of the case." *750 ILCS 5/506(a)* (West 2004).

[**158] Here, the Office of the Cook County Public Guardian was appointed as a child's representative for Daniel. The child's representative is a hybrid of an attorney and a guardian *ad litem*. Gilmore, Understanding the Illinois Child's Representative Statute 89 Ill. B.J. 458, 460 (2001). The statute specifically details this dual role of the child's representative, explaining that "the child's representative shall have the same power and authority to take part in the conduct of the litigation as does an attorney for a party and shall possess all the powers of investigation and recommendation as does a guardian ad litem." *750 ILCS 5/506(a)(3)* (West 2004).

The question here is whether the "power and authority" of the child's representative to "take part in the conduct of the litigation as does an attorney for a party" includes the ability to file motions for changes in temporary custody. Interpreting *section 506(a)(3)* in accordance with its plain meaning (see *Doe v. Chicago Board of Education, 213 Ill. 2d 19, 24, 820 N.E.2d 418, 421, 289 Ill. Dec. 642 (2004)*), [***27] the child's representative, pursuant to his powers as an attorney, must be "able and obligated to conduct necessary discovery, file appropriate pleadings, depose and present witnesses, and review experts' reports." See Davis & Yazici, 12 Illinois Practice of Family Law *750 5/506* (2005-06 ed.) (dis-

cussing the role of an attorney for the child in dissolution of marriage proceedings). Further, section 603(a) of the Act provides that "[a] party to a custody proceeding * * * may move for a temporary custody order." *750 ILCS 5/603(a)* (West 2004). Because the child's representative is to have the same power and authority to take part in the litigation as an attorney for the parties, and an attorney for the parties may move for a temporary custody order, we find that *section 506(a)(3)* does endow the child's representative with the authority to file motions for changes in temporary custody. If we were to hold otherwise, the child's representative would be unable to advocate for the best interest of the child during the dissolution of marriage proceedings. See *750 ILCS 5/506(a)(3)* (West 2004).

Petitioner next contends that the circuit court erred in failing to conduct an evidentiary [***28] hearing before modifying temporary custody. We disagree.

[*116] Section 603(a) of the Act provides that where there has been no objection to a motion for temporary custody, the court may award temporary custody solely on the basis of affidavits. *750 ILCS 5/603(a)* (West 2004). Here, petitioner made no objection to the emergency motion of the child's representative to give respondent temporary custody of Daniel, nor did petitioner request an evidentiary hearing on that motion. Therefore, we find no error resulting from the fact that the circuit court failed to conduct an evidentiary hearing on the motion of the child's representative.

In re Marriage of Stone, 164 Ill. App. 3d 1046, 1050, 518 N.E.2d 402, 405-06, 115 Ill. Dec. 877 (1987) (finding that mother was not denied due process where circuit court awarded father temporary custody without conducting an evidentiary hearing where mother never requested one).

Accordingly, we affirm the order of the circuit court of Cook County awarding respondent temporary custody of Daniel.

Petition for leave to appeal granted; affirmed.

QUINN, P.J., and GREIMAN, J., concur.

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SHEPARD'S SUMMARY HIDE

Unrestricted *Shepard's* Summary

No subsequent appellate history.

Citing References:

Citing Decisions:	**Citing decisions with no analysis assigned (10)**
Other Sources:	**Statutes (1), Treatises (6), Court Documents (2)**
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CITING DECISIONS (10 citing decisions)

ILLINOIS APPELLATE COURT

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1. **Cited by:**
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3. **Cited by:**
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7TH CIRCUIT - COURT OF APPEALS

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12. 1-11 Gitlin on Divorce @ 11-12

13. 1-11 Gitlin on Divorce @ 11-14

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15. 1-15 Illinois Civil Procedure Supp. to @ 15.01

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